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Attorney for **Mr. Ricardo Flores**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
**(HONORABLE JOHN A. HOUSTON)**

UNITED STATES OF AMERICA,	)	CASE NO. 07CR3471-JAH
	)	
Plaintiff,	)	DATE: January 22, 2008
	)	TIME: 8:30 a.m.
v.	)	
	)	STATEMENT OF FACTS AND
RICARDO FLORES	)	MEMORANDUM OF POINTS AND
	)	AUTHORITIES IN SUPPORT OF
Defendant.	)	DEFENDANT'S MOTIONS
	)	
	)	
	)	

**I.**

**STATEMENT OF FACTS<sup>1</sup>**

On November 4, 2007, agents arrested Mr. Flores at the Otay Mesa Port of Entry on suspicion of illegal reentry.

On December 27, 2007, the government secured a three count indictment against Mr. Flores. In this three-count indictment, the government has charged Mr. Flores with

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<sup>1</sup>Facts referred to in this memorandum are based on information provided by the government. Mr. Flores does not admit their accuracy and reserves the right to challenge them.

1 attempted entry after deportation under 8 U.S.C. Section 1326, unlawful possession of  
2 identification document under 18 U.S.C. Section 1028(a), and fraud and misuse of entry  
3 document under 18 U.S.C. Section 1546(a).

4 **II.**

5 **MOTION TO COMPEL DISCOVERY/PRESERVE EVIDENCE**

6 Mr. Flores requests the following discovery. His request is not limited to those  
7 items of which the prosecutor is aware. It includes all discovery listed below that is in the  
8 custody, control, care, or knowledge of any “closely related investigative [or other]  
9 agencies.” See United States v. Bryan, 868 F.2d 1032 (9th Cir. 1989).

10 (1) Brady Information. The defendant requests all documents, statements, agents’  
11 reports, and tangible evidence favorable to the defendant on the issue of guilt and/or  
12 which affects the credibility of the government’s case. Under Brady v. Maryland, 373  
13 U.S. 83 (1963), impeachment as well as exculpatory evidence falls within the definition  
14 of evidence favorable to the accused. United States v. Bagley, 473 U.S. 667 (1985);  
15 United States v. Agurs, 427 U.S. 97 (1976).

16 (2) Any Proposed 404(b) Evidence. The government must produce evidence of  
17 prior similar acts under Fed. R. Crim. P. 16(a)(1) and Fed. R. Evid. 404(b) and any prior  
18 convictions which would be used to impeach as noted in Fed. R. Crim. P. 609. In  
19 addition, under Fed. R. Evid. 404(b), “upon request of the accused, the prosecution . . .  
20 shall provide reasonable notice in advance of trial . . . of the general nature” of any  
21 evidence the government proposes to introduce under Fed. R. Evid. 404(b) at trial. The  
22 defendant requests notice two weeks before trial to give the defense time to investigate  
23 and prepare for trial.

24 (3) Request for Preservation of Evidence. The defendant requests the preservation  
25 of all physical evidence that may be destroyed, lost, or otherwise put out of the  
26 possession, custody, or care of the government and which relate to the arrest or the events  
27

1 leading to the arrest in this case. This request includes, but is not limited to, the results of  
2 any fingerprint analysis, the defendant's personal effects, and any evidence seized from  
3 the defendant or any third party.

4 (4) Defendant's Statements. The defendant requests disclosure and production of  
5 all statements made by the defendant. This request includes, but is not limited to, the  
6 substance of any oral statement made by the defendant, Fed. R. Crim. P. 16(a)(1)(A), and  
7 any written or recorded statement made by the defendant. Fed. R. Crim. P.  
8 16(a)(1)(B)(i)-(iii).

9 (5) Tangible Objects. The defendant seeks to inspect and copy as well as test, if  
10 necessary, all other documents and tangible objects, including photographs, books,  
11 papers, documents, fingerprint analyses, vehicles, or copies of portions thereof, which are  
12 material to the defense or intended for use in the government's case-in-chief or were  
13 obtained from or belong to the defendant. Fed. R. Crim. P. 16(a)(1)(E).

14 (6) Expert Witnesses. The defendant requests the name, qualifications, and a  
15 written summary of the testimony of any person that the government intends to call as an  
16 expert witness during its case in chief. Fed. R. Crim. P. 16(a)(1)(G).

17 (7) Witness Addresses. The defendant requests access to the government's  
18 witnesses. Counsel requests a witness list and contact phone numbers for each  
19 prospective government witness. Counsel also requests the names and contact numbers  
20 for witnesses to the crime or crimes charged (or any of the overt acts committed in  
21 furtherance thereof) who will not be called as government witnesses.

22 (8) Jencks Act Material. The defendant requests production in advance of trial of  
23 material discoverable under the Jencks Act, 18 U.S.C. § 3500. Advance production will  
24 avoid needless delays at pretrial hearings and at trial. This request includes any "rough"  
25 notes taken by the agents in this case. This request also includes production of transcripts  
26 of the testimony of any witness before the grand jury. See 18 U.S.C. § 3500(e)(1)-(3).

1 (9) Informants and Cooperating Witnesses. The defendant requests disclosure of  
2 the name(s), address(es), and location(s) of all informants or cooperating witnesses used  
3 or to be used in this case, and in particular, disclosure of any informant who was a  
4 percipient witness in this case or otherwise participated in the crime charged. Roviaro v.  
5 United States, 353 U.S. 52, 61-62 (1957). The government must disclose any information  
6 derived from informants which exculpates or tends to exculpate the defendant. Brady v.  
7 Maryland, 373 U.S. 83 (1963). The government must disclose any information indicating  
8 bias on the part of any informant or cooperating witness. Id.

9 (10) Specific Request. Mr. Flores specifically requests the opportunity to view  
10 his “A-File.”

11 (11) Residual Request. The defendant intends by this discovery motion to invoke  
12 his rights to discovery to the fullest extent possible under the Federal Rules of Criminal  
13 Procedure and the Constitution and laws of the United States.

### 14 III.

#### 15 LEAVE TO FILE FURTHER MOTIONS

16 Mr. Flores and defense counsel have received approximately 83 pages of discovery  
17 in this case. As new information surfaces – via further discovery provided by  
18 government, defense investigation, or an order of this court – the defense may need to file  
19 further motions, or to supplement existing motions. Defense counsel requests leave to  
20 file further motions.

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IV.

**CONCLUSION**

Mr. Flores requests that this Court grant his motions.

Respectfully submitted,

//s// Zandra L. Lopez

Dated: January 15, 2008

**ZANDRA L. LOPEZ**  
Attorney for Mr.Flores